

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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GOAMERICA, INC.,)	
)	
Opposer,)	Service Mark Application
)	Serial No. 75/559,716
)	for
)	Go2America
v.)	INTERNET
)	International Class 38
Datawave Technologies Co., LLC,)	Filed September 25, 1998
)	Published August 20, 2002
Applicant.)	
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NOTICE OF OPPOSITION

GoAmerica, Inc. (hereinafter, "Opposer" and/or "GoAmerica"), a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 401 Hackensack Avenue, Hackensack, New Jersey 07601, believes that it will be damaged by the registration of U.S. Service Mark Application Serial No. 75/559,716 for the stylized design mark GO2AMERICA INTERNET, as shown below, in International Class 38 and hereby opposes same.

Go2America
INTERNET

-EXPRESS MAIL" mailing label number-- EL 544587359US

EL 544587359US

Date of Deposit October 21, 2002

I hereby swear that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513

Inez P Vega
Inez P Vega
Signature

As grounds for opposition it is alleged that:

1. GoAmerica, Inc. is the owner of the marks GOAMERICA, GO.NET and various GO combination marks for wireless telecommunications services, wireless electronic mail services and wireless internet services.
2. GoAmerica is the owner of U.S. Servicemark Registration No. 2,296,677 for the mark GO.NET in International Class 38. U.S. Servicemark Registration No. 2,296,677 is valid and subsisting, uncanceled and unrevoked.
3. GoAmerica is also the owner of the following pending federal service mark applications for GOAMERICA and other GO combination marks:

MARK	APP. SER. NO.	FILING DATE	GOODS/SERVICES
GOAMERICA	75/247,637	2/25/97	Providing wireless telecommunications connections to a global computer network, in Class 38; providing wireless access to a global computer network, in Class 42
GO.WEB	75/377,594	10/22/97	Providing wireless telecommunications connections to a global computer network, in Class 38
GOAMERICA YOUR WIRELESS ISP	75/809,240	9/27/99	Providing wireless telecommunications connections to a global computer network; providing wireless electronic mail services via a global information network featuring management, filtering, storing, forwarding, routing and preview capabilities, in Class 38; providing wireless access to a global computer network

MARK	APP. SER. NO.	FILING DATE	GOODS/SERVICES
GOAMERICA WIRELESS E-MAIL AND INTERNET TO GO	75/812,876	10/1/99	Providing wireless telecommunications connections to a global computer network; providing wireless electronic mail services via a global information network featuring management, filtering, storing, forwarding, routing and preview capabilities, in Class 38; providing wireless access to a global computer network, in Class 42
GO.DISPATCH	76/259,861	5/21/01	Providing wireless telecommunications connections to a global computer network; providing wireless electronic digital messaging and voice mail services via a global information network featuring management, filtering, storing, forwarding, routing and preview capabilities; providing multiple-user access to a global computer network, in Class 38
GO.MESSENGER	76/291,573	7/27/01	Providing wireless telecommunications connections to a global computer network; providing wireless electronic digital messaging and voice mail services via a global information network featuring management, filtering, storing, forwarding, routing and preview capabilities; electronic messaging services enabling users to receive voice, facsimile, electronic mail and other forms of messages via a wireless device; providing multiple-user access to a global computer network, in Class 38
GO.MESSENGER PLUS	76/291,438	7/27/01	Providing wireless telecommunications connections to a global computer network; providing wireless electronic digital messaging and voice mail services via a global information network featuring management, filtering, storing, forwarding, routing and preview capabilities; electronic messaging services enabling users to receive voice, facsimile, electronic mail and other forms of messages via wireless device; providing multiple-user access to a global computer network, in Class 38

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4. Opposer has used the mark and name GOAMERICA and various GO combination marks, such as GO.NET, since at least as early as 1995 in connection with the following goods and services: (a) providing wireless telecommunications connections to a global computer network; (b) providing wireless access to a global computer network; (c) providing wireless electronic mail services via a global information network featuring management, filtering, storing, forwarding, routing and preview capabilities; and (d) related goods and services including but not limited to wireless communications devices such as pagers, cellular telephones, personal digital assistants and the like.

5. GoAmerica is one of the leading wireless Internet service providers in the United States.

6. Since its founding in 1995, GoAmerica has expanded its business to create wireless electronic mail and web-based solutions for corporations and mobile professionals across multiple data networks using standard web browsers. Through its portfolio of wireless data solutions, products, network services and value added applications, GoAmerica provides such services as location independent access to electronic mail, alphanumeric paging, web browsing, intranet access, and real-time delivery of news and information.

7. Opposer's goods and services under the mark GOAMERICA and various GO combination marks are well known within the communications and Internet industries, as well as to the general public.

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8. Opposer distributes manuals, brochures, and promotional materials in connection with its wireless access, communications and electronic mail services and related goods and services to consumers nationwide and advertises in national magazines such as The New York Times and the nationally syndicated radio talk show, "Imus in the Morning".

9. Opposer offers its GOAMERICA goods and services to corporations and the public at large throughout the United States.

10. As a result of Opposer's extensive advertisement, promotion and sales of its GOAMERICA goods and services, the GOAMERICA mark, as well as GoAmerica's various GO combination marks, have acquired secondary meaning and are exclusively associated with wireless access services and related goods and services originating with Opposer.

11. Upon information and belief, the predecessor-in-interest of Applicant Datawave Technologies Co., LLC, namely, Go2America LLC, filed Application Serial No. 75/559,716 for the stylized design mark GO2AMERICA INTERNET, as shown below, in International Class 38 for "Providing access to a global computer information network for the transfer and dissemination of information in a wide variety of fields":

Go2America
INTERNET

12. Applicant's Application Serial No. 75/559,716, which was filed on September 25, 1998, claims a date of first use of January 1, 1998, long after Opposer's first use of GOAMERICA and its GO combination marks.

13. Applicant's Application Serial No. 75/559,716 was filed on September 25, 1998, after the February 25, 1997 date of filing of Opposer's Application Serial No. 75/247,637 for the mark GOAMERICA in International Classes 38 and 42 as identified above

14. In or around 1999, Opposer notified Applicant's predecessor-in-interest, Go2America LLC, of its objections to Go2America LLC's use of the mark GO2AMERICA INTERNET.

15. As a result of Opposer's objections, Applicant's predecessor-in-interest, Go2America LLC, agreed to cease use of the mark GO2AMERICA INTERNET and to withdraw the subject Application Serial No. 75/559,716.

16. Upon information and belief, Applicant's predecessor-in-interest ceased use of the mark GO2AMERICA INTERNET as a result of Opposer's objections, including the stylized design format shown below which is the subject of the subject Application Serial No. 75/559,716, pursuant to Go2America's agreement with Opposer:

Go2America
INTERNET

17. Upon information and belief, Applicant, Datawave Technologies Co., LLC, recently acquired Go2America LLC, the original owner of the subject Application Serial No. 75/559,716.

18. Upon information and belief, Applicant, Datawave Technologies Co., LLC, was advised at the time of its acquisition of Go2America LLC of Opposer's senior rights and Opposer's objections to use of the mark GO2AMERICA, as well as Go2America LLC's agreement to cease use of the marks GO2AMERICA and GO2AMERICA INTERNET and to withdraw the subject Application Serial No. 75/559,716

19. Opposer believes and alleges that Applicant's mark, when applied to the services identified in U.S. Service Mark Application Serial No. 75/559,716, is likely to cause confusion or mistake, or to deceive, and will deceive and mislead the trade and purchasing public into believing that Applicant is licensed or controlled by Opposer, or that Applicant is a division or subsidiary of or in some way related to Opposer, or that Applicant's services are sponsored, licensed, approved or endorsed by Opposer.

20. The subject Application Serial No. 75/559,716 for the stylized design mark GO2AMERICA INTERNET is virtually identical to Opposer's famous GOAMERICA mark, as it encompasses the mark GOAMERICA in its entirety.

21. Applicant's disclaimer of the term INTERNET in the mark GO2AMERICA INTERNET in the subject Application Serial No. 75/559,716 confirms that the parties' marks are functionally identical.

22. The services offered by the parties under the marks GOAMERICA and GO2AMERICA INTERNET, respectively, are identical, establishing that confusion is inevitable between the parties' respective use of the foregoing marks.

23. Any problems or complaints concerning Applicant's services offered under the mark GO2MAERICA INTERNET, including the stylized design mark shown below, are likely to reflect adversely upon Opposer and are likely to seriously injure Opposer's hard-won and long-established reputation and goodwill in Opposer's GOAMERICA, GO.NET and various GO combination marks for wireless access services and related goods and services.

Go2America
INTERNET

24. By reason of the foregoing facts, Opposer will be irreparably damaged by the registration of Applicant's confusingly similar mark for the goods identified in U.S. Trademark Application Serial No. 75/559,716.

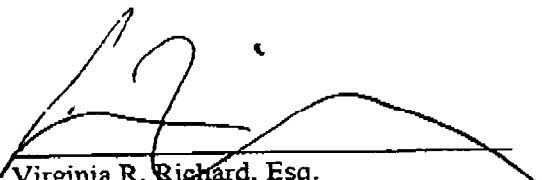
25. Applicant's use of the mark GO2AMERICA INTERNET in connection with services which are virtually identical to the services offered by Opposer under its famous GOAMERICA family of marks is likely to dilute the distinctive quality of Opposer's GOAMERICA and GO combination marks, and to lessen the capacity of Opposer's GOAMERICA mark and GO combination marks to identify Opposer's goods and services and to distinguish Opposer in the marketplace.

WHEREFORE, Opposer prays that this Opposition be sustained and Applicant's mark be denied registration in International Class 38.

A duplicate copy of this Notice of Opposition and the filing fee of \$300.00 as required by 37 C.F.R. § 2.6 are enclosed. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 501-804, Order No. 84582.3003.

Dated: New York, New York
October 21, 2002

By:



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